Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks	)	WC Docket No. 18-141

REPLY COMMENTS OF
The MICHIGAN INTERNET AND TELECOMMUNICATIONS ALLIANCE
ON PETITION FOR FORBEARANCE OF USTELECOM

On or before August 6, 2018, thirty (30) interested parties filed Comments on the Petition for Forbearance filed by USTelecom – The Broadband Association ("USTelecom"). Twenty-eight (28) of the Commenters opposed the Petition. Two parties, Verizon and the Internet Innovation Alliance ("IIA") supported it. Both Verizon and the IIA are closely aligned with USTelecom. Verizon is a member of USTelecom and AT&T, also a member of USTelecom, is a member of IIA. Because they have the same self-interests as USTelecom, it is not surprising that Verizon and IIA have supported the Petition.

I. THE MOTION FOR SUMMARY DENIAL OF THE COMPETIVE CARRIER GROUP SHOULD BE GRANTED.

On August 6, 2018, Incompas, FISPA, and the Midwestern Association of Competitive Communications ("MACC") (collectively, the "Competitive Carriers Group") filed a Motion for Summary Denial pursuant to Section 1.56 of the Commission's rules. The Competitive Carrier Group's legal position is correct. USTelecom has not submitted evidence which would legally permit the Commission to make the substantial proposed findings that the continued provision of

UNEs and Resale would be contrary to the public interest. USTelecom's broad conclusory assertions are legally insufficient, devoid of requisite and detailed data. USTelecom has not presented data on a market-by-market or a product-by-product basis.

As the Competitive Carrier Group has shown, granularity of data is essential and legally required. The telecommunications marketplace is unquestionably diverse from both product and market perspectives. Looking just at the rural market[1], the Comments filed by Blackfoot Communications, Inc. demonstrate that the challenges posed in Montana and Idaho are distinctly different than the state of competition in metropolitan areas. Likewise, the Comments of Liberty Cablevision of Puerto Rico (pp 10-11) indicate that in Puerto Rico, outside of San Juan, the ILEC's share of the fixed voice market (residential and business) is believed to be in excess of 90%.

Even in California, there are sparsely populated counties. In its Comments (p 1), Snowcrest described its need for UNEs to serve California's geographically fifth largest county, which has an average population of seven people per square mile. It would not be in AT&T's financial interest to focus its resources to build out such a sparsely populated area when it can earn a far greater return by investing in its metropolitan service areas. In all likelihood, the hope of such rural areas depends on the ingenuity and drive of persons who are rooted in the local community, like the Engdahl family. With UNEs, Snowcrest is able to provide faster and more robust service than either the ILEC or cable company (pp 2- 3).

Looking at just one market, the above discussion and several of the filed Comments reinforce the basis of the Motion of Summary Denial filed by the Competitive Carrier Group; USTelecom failed to submitted data in any granular detail, but instead presented only a handful

[1] Examination of the rural market is just one of the many market examinations that need to be made.

of nationwide statistics, a tactic that masks needs of the very segments of the country with the greatest need for UNEs[2].

II. MITA'S REPLY TO VERIZON

Verizon makes unsupported and illogical arguments similar to the arguments that USTelcom has made.[3] Many of Verizon's contentions are self-serving. Obviously, Verizon and the other ILECs have a financial incentive to impair the ability of CLECs to compete. Numerous Comments have shown that nullification of the ILECs' obligations to provide UNEs and Resale would do just that.

Verizon states that "since 1996, the telecommunications marketplace has transformed beyond recognition." (Vz, p 1) Presumably, Verizon references 1996 because that was the year the Federal Telecommunications Act ("FTA") was passed. However, the very reason that the FTA was enacted was ***to achieve a seismic change***; the FTA ended the rate regulation regime and opened up the local exchange market to competition. If the marketplace were not fundamentally different today, the FTA would have proved ineffective and a failure. Such planned transformation is not a reason to gut the FTA of foundational provisions. The argument that nullifying the foundation of the FTA will accelerate the transition to competition makes no sense. Rather, as the vast majority of Commenters have demonstrated, the destruction of

[2] Even statewide statistics would mask essential granular data. For example, in Michigan, the average population per square mile is 175. However, on a county basis, the average population per square mile ranges from 4.3 people in Keweenaw County to 3,356 people per square mile in Wayne County. See the US Censsus Bureau statistics at:
https://www.michigan.gov/documents/co_mcd_26764_7.PDF
The need for UNEs would vary greatly depending upon which of these diverse geographic areas is being served.

[3] The Comments of IIA are also very similar to the arguments of USTelecom and Verizon. Accordingly, MITA will rely on its Initial Comments and these Reply Comments and does not separately address the Comments of IIA.

unbundled network elements ("UNEs") would wipe out a significant portion of the progress that has been made to date, strand millions and millions of dollars of investment, and make further progress in non-urban and underserved areas virtually impossible.

Verizon spends several pages of its Comments (pp 10-13) describing in general terms certain successes some individual CLECS have achieved in certain markets selling certain products and then reaches a conclusion that the competitive balance the Congress sought to achieve by enacting the FTA was accomplished "long ago." (p 14) But the fact that some growth has occurred and is continuing to occur is not remarkable. Like USTelcom, Verizon has not presented any granular data to show the pervasiveness of competition. Verizon has only presented general evidence that competition is growing. However and furthermore, a rising trend line reveals nothing about when the apex of the curve will be reached. Nor has there been any analysis to demonstrate that the apex of the competitive curve would be an appropriate time for removing access to UNEs

Verizon seems to equate the time-division multiplexing ("TDM") protocol with DS1 and DS3 UNEs. (Vz, pp 13 to 14) However, copper UNEs are no longer tied to TDM. As Verizon should be aware, exciting improvements in the transmission speeds of copper that do not utilize TDM have been achieved. The operations of Blackfoot Communications have clearly demonstrated this fact:

> "Many of Blackfoot's customers are large and enterprise businesses that require low-latency, high capacity Ethernet services. Through bonding, Blackfoot is able to provide and "Ethernet-over-copper" solution of up to 50 Mbps. In addition, Blackfoot uses UNE loop bonding to offer its business customers sophisticated, multi-protocol label switching ("MPLS") circuits. Bonding UNE loops enables Blackfoot to offer broadband Internet download speeds of more than 50 Mbps. Blackfoot also uses DS-0 loops to provide digital subscriber line ("DSL") services at download speeds of up to 15 Mbps. Further, bonding multiple UNE loops enables Blackfoot to offer its business customers its hosted-

> IP voice solution, the highest quality, most state-of-the-art IP-enabled voice platform available." (p 3)

ILECs should not be the only carriers that are able to maximize the value of the already existing copper infrastructure. Denying CLECs access to UNEs would have such a result and remove existing competitive incentives to make the greatest and best possible use of the existing infrastructure.

Furthermore, a decline in TDM usage does not mean that TDM-based services will cease to provide value to customers. Because electric power is supplied along with the telecommunications service, businesses continue to depend on POTS for essential services such as 911, alarm, and elevator services. If CLECs did not have access to the provision of such essential services, ILECs would hold a distinct competitive advantage over CLECs.

SD-WAN is another technological development that frequently makes use of copper lines. SD-WAN aggregates multiple connectivity methods to provide more bandwidth at a lower cost and improved quality. For example, SD-WAN service could combine two or more connectivity methods, such cable, DSL, MPLS, wireless and/or T1 service. The customer selects which of various connectivity methods to utilize. SD-WAN combines the selected methods and routes the applications along the best path. If one path should go down, SD-WAN would automatically send traffic along the active link(s). Frequently, for reliability reasons, customers prefer to include a copper T1 service among the selected connectivity methods. If CLECs did not have access to UNEs, they would be a less attractive competitive choice to customers seeking SD-WAN service.

Accordingly, for all the above reasons, any decline in TDM usage provides no justification for nullification of the statutory obligation of ILECs to provide access to the copper PTSN via UNEs.

Verizon argues that the current regulations are unnecessary and counterproductive:

> "The outdated unbundling, resale, and long-distance regulations are not only unnecessary to protect competition,but retaining them threatens to have the opposite effect. Overregulation harms competition by stifling innovation and lessening incentives to invest in economically efficient activity. The negative effects of overregulation are particularly destructive in the telecommunications sector because of its unusually high rates and speed of innovation. 'Companies must already bear huge risks when investing in new communications technologies. Imposing additional regulatory restraints "creat[es] disincentives to investment, beyond those risks that are inherent in the marketplace.' " (Vz, p 20)

Again, Verizon resorts to gross generalizations. Verizon's generalizations are so broad and vague that they are essentially meaningless and inapplicable to the specific conclusion that Verizon is urging the Commission to accept. Implicit in Verizon's premise is that the continuance of UNEs would be "overregulation," but Verizon did not present an explanation or requisite evidence showing how the continuance of UNEs, which would have been in place and working as intended for 22 years, would constitute overregulation. Rather, as numerous Commenters have shown, UNEs continue to be essential competitive launch pads.[4]

Verizon asserts above that "overregulation would be particularly destructive in the telecommunications sector "because of its 'unusually high rates and speed of innovation." But Verizon argues elsewhere (p 2) that copper UNEs are becoming obsolete. Under that view of copper UNEs, copper UNEs would presumably not be telecommunications services where unusually high rates of speed and innovation are occurring. Verizon cannot logically argue, on one hand, that UNEs are no longer important or needed, and therefore their provision should not

4 In its Comments, the Electronic Frontier Foundation has aptly described UNEs as "launch pads for competitive stimulus." (p 3)

be required, and simultaneously argue that such UNE services are resulting in speed and innovation changes at such a high rate that their provision should not be required.

In the above quote, Verizon also contends that regulation is counterproductive in part because "Companies must already bear huge risks when investing in new communications technologies." Verizon continues that "imposing additional regulatory restraints" creates investment disincentives. But neither of these arguments is factually relevant to the provision of UNEs. Bare copper UNEs (before CLECs enhance their value by adding their equipment and software) are not investments in "new" communications technologies. Rather, UNEs enable CLECS to create maximum value of ***existing*** infrastructure – an entirely different scenario than what Verizon is describing. Nor does USTelecom's Petition involve the "imposi[tion of] additional regulatory restraints." Rather, USTelecom's Petition is requesting the nullification of existing statutory ILEC obligations.

Next, Verizon makes the following assertion:

> "The intrusive obligation placed on incumbents here, which forces them to share facilities with competitors or resell them at artificially discounted rates, is particularly anticompetitive." (Vz pp 21-22)

The "intrusive" obligation placed on ILECs to share their facilities with competitors cannot logically or legally be found to be anticompetitive. Because ILECs owned all the facilities in 1996, the only feasible means of creating competition was by imposing a sharing obligation. Further, as mentioned above, Verizon described on pages 10 to 14 of its Comments how effective UNEs have been in creating competition. Thus, UNEs are ***enabling*** the transition to competition in a formerly monopolistic world.

Nor is there any basis for Verizon's contention that it is being forced to resell facilities "at artificially discounted rates." Resale rates are determined by the retail price minus avoided

costs. The ILECs set the retail price themselves. The only discount that an ILEC is required to provide to CLECs is an amount representing the costs that the ILECs no longer have to incur (like marketing, billing and collecting costs) because it is selling at wholesale rather than retail. Thus, as a matter of law, resale is a revenue neutral transaction, and the ILEC, whether it sells to a retail customer or resells to a CLEC at wholesale, is financially indifferent. There is no "artificial" discount. Again, Verizon's argument is factually incorrect

In summary, all of Verizon's arguments are aimed at convincing the Commission that UNEs are obsolete, unneeded and outdated. At the beginning of its Comments, Verizon asserted:

> "Eliminating UNEs poses no risk to consumers, competition, or the public interest. Competitors can deploy their own facilities." (Vz, p 2)

If only things were that simple. It is easy for Verizon to say that CLECs don't need UNEs when, if forbearance is granted, Verizon would not suffer any corresponding loss and would continue to enjoy and utilize the new copper technologies that have tremendously increased the value of copper. In contrast to Verizon's self-serving assertion, numerous Comments filed by competitive providers and state commissions vividly detail the continued need for UNE access and the harms that would befall a significant segment of the public if access to UNEs were eliminated. Despite all of Verizon's sophistries of why CLECs don't need access to the copper PTSN, the ILECs themselves have not pledged to abandon their use of the copper network built without risk in monopolistic times. In truth, access to the existing copper network will lose its importance to CLECs when access to copper loses its importance to the ILECs.

III. CONCLUSION

The Commission should grant the Motion for Summary Denial of the Competitive Carrier Group. In the alternative, the Commission should deny USTelecom's Petition for Forbearance.

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